

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Richmond, California)

ASR INTERNATIONAL CORPORATION

Employer¹

and

Case 32-RC-5392

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL UNION 315, CHANGE TO WIN COALITION

Petitioner²

DECISION AND DIRECTION OF ELECTION

The Employer, ASR International Corporation, is engaged in the business of providing quality control engineering and related services at locations throughout the United States, including a facility located in Richmond, California (Richmond facility). The Employer employs approximately nine employees at its Richmond facility. The Petitioner, International Brotherhood of Teamsters, Local Union 315, Change to Win Coalition, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, and it seeks to represent a unit consisting of all full-time and regular part-time quality clerks I (QC I employees) and quality clerks II (QC II employees) employed by the Employer at the Richmond, California facility; excluding all other employees, guards, and supervisors as defined in the Act. A hearing officer of the Board held a hearing. Both the Petitioner and the Employer filed briefs with me.

The only issues in dispute here are: (1) whether the petitioned-for unit should be a single location bargaining unit or a nationwide multi-location bargaining unit; and (2)

¹ The name of the Employer appears as stipulated at the hearing.

² The name of the Petitioner appears as modified at the hearing.

whether employees classified as “QC II employees” constitute statutory supervisors within the meaning of Section 2(11) of the Act and should, therefore, be excluded from the unit. The Petitioner seeks to represent a single-location unit in Richmond, California, consisting of approximately six employees classified as “QC I employees” and two employees classified as “QC I/QC II employees.” The Employer contends that the single facility unit sought by the Petitioner is not an appropriate unit and that the only appropriate bargaining unit would include each of the Employer’s 22 worksites where the Employer’s employees work pursuant to a service contract with the United States Postal Service (USPS). The Employer also takes the position that the individuals who are classified as QC IIs are part time Section 2(11) supervisors and that they should therefore be excluded from the unit.

I have considered the evidence and the arguments presented by the parties on each of these issues. As discussed below, I have concluded that the single-location unit sought by Petitioner is appropriate. Further, I have concluded that QC II employees are not supervisors and should be included in the unit herein found appropriate.

1. The Employer’s Operations

The Employer, a New York corporation, is a multi-national company engaged in the business of providing quality control engineering and related services. Its headquarters is located in Hauppauge, New York. Since March 1, 2005, the Employer has had a service contract with the USPS to provide quality support services at 22 sites across the United States.³ The 22 sites are owned and operated by various operating

³ The nationwide unit proposed by the Employer would encompass 22 work sites located in Atlanta, Chicago, Cincinnati, Dallas, Denver, Des Moines, Detroit, Front Royal (Virginia), Greensboro, Jacksonville, Kansas City, Long Island, Los Angeles, Memphis, Minneapolis, New Jersey, Philadelphia, Pittsburgh (Pennsylvania), Richmond (California), Seattle, Springfield (Massachusetts), and St. Louis.

contractors, including Allan Ritchey Incorporated, who have contracted with the USPS to perform daily inspections and repairs of USPS equipment at these sites. As part of the service contract with the USPS, the Employer audits and monitors the operating contractors at the 22 sites to ensure that the inspections and repairs are properly performed by the on-site contractors. The operations at each of the 22 sites are similar; therefore, the auditing and monitoring job functions of the Employer's employees at these sites are also similar.⁴

The Employer employs approximately 173 employees, including supervisors and managers, to staff its USPS operations. According to the Employer, approximately 111 employees are classified "QC I employees", 26 employees are classified "QC II employees," and 36 employees are classified "quality process auditors" (QPA). All of these employees work at the 22 work sites covered by the USPS service contract.⁵

At the Richmond facility, the Employer employs six QC Is, two dual QC I/QC IIs,⁶ and one QPA.⁷ The Los Angeles and Seattle USPS work sites are the closest ones to the Richmond facility. According to "mapquest.com", the distances between these cities and Richmond are approximately 383 miles and 793, respectively.

There is no history of collective bargaining at any of the 22 sites and no labor organization is currently seeking to represent a unit consisting of all 22 sites.

⁴ The Employer's USPS operation is governed by the Service Contract Act which defines minimum standards for wages and benefits for hourly personnel working at the sites, including the petitioned-for unit.

⁵ The Employer also employs 15 employees at its New York headquarters office and 35 employees who work in various administrative locations throughout the United States. While the record established that the 35 field employees do not work under the contract with the USPS, it is less clear what, if any, services they provide for the Employer's employees at the 22 USPS work sites. The headquarters employees provide administrative and personnel services for the work site employees.

⁶ At the hearing there was conflicting testimony regarding whether the two individuals are QCIs or are QCI/QCIs. There is no dispute that these two individuals spend at least half of their time working as QCIs.

⁷ At hearing, the parties stipulated that QPA Michelle Tieger should be excluded from any unit found appropriate because she is a statutory supervisor and she has exercised one or more of the supervisory indicia listed in Section 2(11) of the Act.

2. Management Hierarchy

Kenneth Nevor has been the Employer's Director of Operations for a little over two years, and he is responsible for handling many programs for the Employer, including the USPS operations. According to Nevor, who testified at the hearing, he takes care of all problems and issues associated with the USPS "program", as well as various other programs he oversees.⁸ Quality Assurance Manager (QAM) Danny Simpson reports to Nevor, and he is responsible for monitoring the Employer's 22 USPS work sites by maintaining "regular" contact with the QPAs at those work sites. He also trains QPAs when necessary and occasionally has input regarding some disciplinary action taken by the QPAs at the work sites. In addition to his role as a QAM, Simpson is also a QPA at the Cincinnati, Ohio, USPS work site. Assistant Quality Assurance Manager Mark Baldwin reports to Simpson and assists him in his QAM responsibilities. Baldwin is also a QPA at the Chicago, Illinois, USPS work site.

There are 36 QPAs assigned to the 22 USPS work sites. Eight of the work sites have one QPA and the rest of the sites have two. All of the QPAs report to Simpson about issues pertaining to hiring, firing, disciplinary actions, insurance, safety, the operating contractor, and administrative and operational matters. The QPAs are the Employer's on-site supervisors, and they control the daily work functions associated with each operation. They are responsible for inspecting and monitoring the work of the on-site contractor and for directing, supervising and inspecting the work of the QC I and QC II employees. QPAs are also responsible for handling personnel matters at their respective work site, including interviewing prospective employees, recommending the

⁸ Nevor was the only witness called by the Employer at the hearing. QC I/QC II employee Frank Thurman was the only witness called by Petitioner.

hiring and firing of employees, disciplining or recommending the discipline of the QCIs and QCIIIs, approving the QC I and II employees' bi-weekly time reports, issuing work assignments, establishing the work schedules, authorizing sick leave requests, and training new employees.

3. Centralized Labor Relations

The Employer's New York headquarters maintains various departments that provide administrative support for the Employer's employees nationwide, including the employees working at the 22 USPS sites. The following departments are located at the headquarters office: human resources, administration, payroll, information technology, engineering, customer support, and a quality division. Headquarters also maintains employee personnel files, including written warnings, employee timesheets, vacation requests, and workers' compensation records.

The Employer is bound by the Service Contract Act which establishes minimum wage rates for all QC I and QC II employees at the 22 work sites. However, the Service Contract Act establishes different wage rates based on the location of the USPS work sites due to the economic condition of the areas where the work sites are located.⁹ The Service Contract Act also establishes minimum thresholds for benefits such as health and welfare, vacations, and holidays.¹⁰ In addition, the Employer has the discretion to offer wage rates and benefits above those mandated by the Service Contract Act. The Employer also provides additional benefits for all the employees at each of the 22 USPS sites, including a 401(k) plan, short and long term disability plans, and a life insurance program.

⁹ QPAs are not covered by the Service Contract Act. Their wage rates are set by the Employer.

¹⁰ Holiday schedules vary among the work sites, some locations receive 10 paid holidays and the others receive 11 paid holidays.

At each of the 22 USPS sites, the Employer maintains the same written policies and procedures regarding vacation and holiday schedules, attendance, tardiness, early leave, work place injury reporting procedures, and travel and expense reporting procedures. Standardized timesheets, vacation request forms, travel and expense reporting forms, job interview checklists, and warning forms are utilized at all 22 USPS work sites.

Biweekly time reports are filled out by all QC I and II employees at each of the 22 USPS work sites and are approved by the respective QPAs, who send the completed time reports to the Employer's headquarters for processing and filing. Payroll is processed at headquarters on a biweekly basis, and all 22 sites have the same payroll system and pay day. Paychecks are sent to the QPAs, who are responsible for distributing them. QPAs are also responsible for preparing travel and expense reports for their respective work site whenever they travel or purchases supplies for the work site.

Hiring decisions are generally initiated by the QPAs who submit recommendations to hire an employee based on the needs of the worksite. The QPAs' recommendations are submitted to the QAM who forwards the recommendations to corporate headquarters. Prospective employees can be selected independently by the QPA, if he/she knows of an interested candidate, or may be selected from a database maintained by the Employer, which contains approximately 200 pre-qualified candidates. The corporate office screens candidates prior to referring them to the QPA for an on-site interview. The screening process includes a review of their work history, a background check, and a drug test. All candidates, whether found by the QPA or selected from the

database, are interviewed on-site by the QPA, because the Employer wants to insure that there is a good “chemistry” between the on-site QPA and the prospective employee. Thus, according to Director of Operations Kenneth Nevor, the Employer follows the QPAs’ recommendations nearly 100 percent of the time.¹¹

Disciplinary action is initiated by the QPAs when they memorialize all of the facts surrounding an incident and then forward their written recommendations to the QAM. Nevor provided conflicting testimony regarding who makes the final decision regarding whether to discipline a QC employee. He initially testified that the QPA and QAM discuss the situation with each other, and “if need be with myself”, before deciding the appropriate disciplinary action to be taken.¹² However, Nevor subsequently testified that he is always involved in all disciplinary action taken at the 22 USPS work sites and that all final decisions are made by corporate headquarters. Yet, Nevor also conceded that QPAs have the authority to make on-the-spot decisions, including taking disciplinary action against QC employees, if the circumstances warrant it, such as a dangerous situation created by an employee. In these circumstances, the QPA could take whatever action he/she deemed necessary, such as sending an employee home, and then the QPA would be required to notify the QAM and headquarters about the situation. Corporate headquarters would then decide if further action is required.¹³

Beginning in about June 2005, the Employer began conducting monthly “team building pizza meetings” at each of the 22 work sites. These meetings are conducted by

¹¹ QPAs use a standardized “QC Interview Checklist” when interviewing a prospective employee. The QPA takes notes on the checklist form and these notes are reviewed by headquarters before the hiring decision is made.

¹² The Employer has not established that in each disciplinary situation, its managers independently investigate the matter raised by the QPA.

¹³ No QC I or II employee has ever been disciplined at the Richmond facility.

the on-site QPA and they are intended to be an informal meeting to discuss general issues or “whatever comes up.” Nevor testified that the purpose of the “team building” meetings is simply to provide the work site employees with an opportunity to “get together” to talk about anything and “just to break through as a team.” Therefore, QPAs have the discretion to set the agenda for the meetings or they can decide not to have a set agenda.¹⁴

In addition, QC I and II employees have been instructed by the Employer to bring their grievances regarding “what’s happening in their workplace” to the QPA first. The record did not disclose how these grievances are resolved after bringing them to the attention of the QPA.

4. Employee Transfers and Interchange

According to Director of Operations Nevor, QC I and QC II employees work exclusively at their regularly assigned work site and they have never been assigned to any other facility. In addition, the Employer has never required an employee to transfer from one of its facilities to another.

5. Operational Integration and Contact Between the 22 Work Sites

The USPS conducts weekly telephone conference calls with all 36 QPAs, QAM Danny Simpson, and eight or nine “contracting operating representatives” who represent the Postal Service. These conference calls normally last about 30 to 45 minutes each week and they are used to discuss the day to day “operational issues” pertaining to the on-site contractors, equipment, and/or inventory. Issues such as disciplinary matters are

¹⁴ The QPA is expected to submit a report to headquarters about the topics that were discussed at the meeting.

not discussed during these conference calls. QC I and II employee do not participate in these conference calls.

QPAs are occasionally called upon to temporarily replace QPAs at other work site in order to cover for them when they are unavailable to work at their respective work sites. The record did not establish how often this occurs at the 22 sites. This has only occurred one time at the Richmond facility when a QPA from another work site covered for the Richmond QPA while he was off-site for about six days. However, no one ever covered for the Richmond QPA on the other occasions when the QPA was off-site.

The Employer recently began conducting “team meetings” for the QPAs at its corporate headquarters. These meetings typically last about two days and the QPA receive training on “how to be better managers.” The Employer has conducted two “team meetings” thus far, which were attended by about 22 of the QPAs and it plans on conducting the last team meeting this month for the rest of the QPAs. There is no contention that any QC I or QC II employee has ever attended any of these team meetings.

QAM Simpson has visited the Richmond site three times since March 1, 2005, but the record did not establish how often he visits any of the other 22 work sites.¹⁵ However, Simpson and Assistant QAM Baldwin may not visit the work sites without first obtaining authorization from the USPS. Director of Operations Nevor must also obtain clearance from the USPS before he can visit any of the sites. The record established that

¹⁵ Simpson visited the Richmond site: once when Ralph Kemner was still the Richmond QPA; when he trained Michelle Tieger to takeover the QPA position; and one week before the instant hearing. According to QC I/QC II employee Thurman, he has only exchanged casual greetings with Simpson when he visited the site, and he generally never has occasion to communicate with QAM Simpson.

he has not yet visited the Richmond work site, and he has only visited a “few” of the other 21 work sites.

QPAs, QAMs and QC I and II employees all have access to the USPS computer system in order to perform the data entry functions associated with their respective positions. However, certain functions on the computer system are not available to the QC I and II employees. For example, QC I and II employees are unable to track Postal Service equipment from one work site to another. The computer system also contains a “project management system” (PMS), developed by the Employer, which provides certain management functions to the QPA and QAM. The record did not detail the type of management functions available to the QPAs and QAM through the PMS (other than their capability to use this system to print out copies of written warning forms). QC I and II employees do not have access to the PMS system.

6. Work Hours

The majority of 22 work sites have a day and night shift but the record did not establish the work hours at the various work sites. However, it was established that the work hours utilized by the Employer at the Richmond facility presented a “unique” situation, because the Employer utilizes two overlapping shifts. One group of employees works from 6:00 a.m. to 2:30 p.m. and the second group works from 9:00 a.m. to 6:30 p.m. The QPA and the two employees classified as QC I/QC II work the first shift. Therefore, only QC I employees staff the Employer’s operation at the Richmond site after 2:30 p.m.

7. Duties and Job Qualifications of the QC I and II Employees

The Statement of Work (SOW) is a part of the service contract with the USPS and it establishes the job duties, job descriptions, and job qualifications for the employees working at the 22 sites. The SOW identifies two work areas for the QC I employee, “palletized product” and “initial container inspection.” The pallet function consists of identifying the different types of containers, confirming the height, weight, and count on each pallet, updating the computer system, and labeling the pallet. “Initial container inspection” requires the QC I employee to determine if a container requires repair by the on-site contractor or is “serviceable” and can be made ready for shipping. The QC I employee is also responsible for updating the computer system regarding the status of the container; applying the correct barcode to the container specifying its destination; and generating the correct documentation for each container.

QC II employees are responsible for “container final inspection.” According to the SOW, the QC II employee is responsible for verifying that all repairs were completed to each container according to specified USPS standards; verifying that containers classified as condemned by the on-site contractor comply with USPS condemned criteria; and entering the correct data in the computer system. There are no provisions in the SOW that set forth any circumstances or situations in which a QC II employee may be expected to assume some QPA duties or responsibilities.

The job qualifications for QC I and II are the same. They must have a minimum of a High School graduation equivalence and experience using office machines and calculators. Candidates must have the ability to use computer keyboards and bar code

scanning equipment and they must be able to resolve minor problems through reference to written instructions.¹⁶

New QC I and II employees are trained by the on-site QPA and the substantive nature of the training is the same at all 22 sites. Since the Employer was awarded the service contract by the USPS (March 1, 2005), two QC II employees have been promoted to the QPA position. One of these promotions occurred in about August or September 2005, when Michelle Tieger, a former dual QC I/QC II employee, replaced the QAM at the Richmond work site after he terminated his employment.

8. Supervisory Duties of the QC II Employees

It is uncontested that Frank Thurman and Luz Williams are the only employees at the Richmond site who perform QC II duties. According to Thurman, they are both classified as dual “QC I/QC II” employees. All the other QC employees at the Richmond site are classified as QC I employees, and the only other ASR employee at the Richmond site is QPA Michelle Tieger. Thurman also testified that he and Williams serve as QC II employees on a rotating basis every two week. Thus, Thurman serves as a QC II employee for two consecutive weeks while Williams works as a QC I employee. After two weeks, they exchange roles.¹⁷

Nevor also testified that QC II employees are required to take on the role of acting QPA whenever the QPA is away from the work site or is otherwise unavailable to handle some situation at the work sit. Nevor also testified that the QPA “interfaces” with the on-

¹⁶ In contrast, the QPA job qualifications requires, among other things, four years of experience in the field of quality assurance and/or quality system auditing and auditing experience in ISO 9000 or other comparable quality system.

¹⁷ Nevor testified that Thurman and Williams concurrently serve as QC II employees and that QPA Tieger determines how they share their respective duties. However, Nevor did not, or could not; testify about any specific arrangements that have been worked out at the Richmond site regarding the “sharing” of their QC II duties.

site contractor so that the on-site contractor is always put on notice that the QC II on duty becomes the acting QPA in the absence of the regular QPA. According to Nevor, on these occasions, the acting QPAs become responsible for getting the shift's work done and handling any problem that arises, and, to accomplish these tasks, the acting QPAs can authorize overtime and assign employees to perform whatever tasks the acting QPA deems necessary. Nevor then generally testified that Thurman and Williams exercised and shared this authority whenever the QPA was absent from the Richmond site.

However, Nevor did not point to any training the QCIIIs may have received in order serve as acting QPAs, and he did not explain why the acting QPA duties are not listed in the extensive job description of the QCIIIs. He also failed to cite any examples of Thurman or Williams ever exercising any supervisory authority or performing any of the QPA's duties, and he provided no documentary support for his version of the Employer's acting QPA system.

Thurman testified generally that he and Williams have only performed QC I and QC II duties, and have never served as "acting QPAs." Thurman also testified that he and Williams have never been told that they were to assume any of the duties of the QPA even when the QPA was absent or unavailable at the work site. In addition to his general testimony, Thurman provided the only specific testimony regarding the Employer's acting QPA claim. According to Thurman, on two occasions since March 1, 2005, the Richmond site QPA was absent from work site, and Thurman and Williams were never called upon to assume, and did not assume, any of the QPA's duties. On the first occasion, former QPA Kemner was off site for about six days, and the Employer replaced him with a QPA from another USPS site for the entire period.

On the second occasion, QPA Tieger missed two days of work because she was sick and no assumed her duties. According to Thurman, he was the QC II when Tieger was out sick, and no one told him that he was supposed to assume any of the QPA's responsibilities. Thus, he continued to perform his regular duties as a QC II, and the QC I employees (including Williams) continued to perform their regular QC I duties. During the two days that Tieger was out sick, she telephoned Thurman each day and directed him to telephone QAM Simpson and let him know if all the QC employees were present. Thurman telephoned Simpson each morning and informed him that one QC I employee was absent each day. This was the extent of his conversations with Tieger and Simpson, and Thurman was not called upon to take any further action or to memorialize the absence of the QC I employee. Moreover, Tieger and Simpson did not communicate with Thurman on any other occasions during Tieger's absence.

Thurman also testified that while Tieger was out sick he did not take on any of her duties. Thus, he did not have any work related interaction with the on-site contractor in her absence, and he was not given access to the QPA's telephone or answering machine in case a QC I employee called in sick. He also testified that if an operational problems had arisen while Tieger was out sick (like a work bottleneck or a machinery breakdown), he would not have interceded because the QC I employees (or the on-site contractor) know whom to call to resolve the problem. If an altercation had occurred, he testified that he probably would have simply telephoned QAM Simpson to let him know about it since he (Thurman) has no authority to tell the QC I employees what to do. Moreover, the on-site contractor and the COR for the Postal Service can communicate directly with QAM Simpson if they believe circumstances warrant it. Other than Nestor's initial

conclusionary testimony of what he believes happens when a QPA is absent, the Employer did not introduce any contrary testimony or documentary evidence regarding the role QCII's Thurman and Williams played when Kemner and Tieger missed work at the Richmond facility.

The regular duties performed by the QCII's also do not demonstrate that they have supervisory authority. According to Thurman, he and Williams do not inspect the work of the QC I employees, and they do not train QC I employees. Thurman also testified that QC I employees do not ask him questions about their jobs or ask for his assistance, because they generally know the QC I job as well as he does. It is uncontested that Thurman has never: hired or fired an employee; disciplined an employee; interviewed a prospective employee; transferred an employee from one job to another; assigned work to an employee; resolved an employee grievance; authorized overtime; promoted an employee or made a recommendation about promoting an employee; evaluated an employee; approved employee time cards; authorized vacation or sick leave; and/or trained an employee.

Unlike the QPA, Thurman and Williams have the same terms and conditions of employment as the other QC employees. Thus, only QPA Tieger has an office at the work site, and she is the only ASR employee who may be called upon to work at another work site. In addition, The Service Contract Act establishes the minimum wage and benefit rates for the QC I and II employees, while QPAs are exempt from the Service Contract Act. Thus, QPA Tieger's wage rate is \$22 per hour and the wage rates for QC I and II employees are approximately \$12.62 and \$14.19 per hour, respectively.

Moreover, QC I and II employees are entitled to overtime while QPAs receive “comp time” in lieu of overtime.

ANALYSIS

The Appropriate Unit

Resolution of unit composition issues begins with an examination of the petitioned-for unit. Only if it is inappropriate will an alternative unit be found. *Bartlett-Collins Company*, 334 NLRB 484 (2001). In making a determination as to whether a petitioned-for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioning union be an appropriate unit for purposes of collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. See *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950); *National Cash Register Co.*, 166 NLRB 173, 174 (1967); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989) (the Board need only select an appropriate unit, not the most appropriate unit). A union is not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with the requested unit does not exist. *Visiting Nurses Association of Central Illinois*, 324 NLRB 55 (1997); *P. Ballentine & Sons*, 141 NLRB 1103, 1107 (1963).

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). As the party opposing the single-facility unit, the Employer has a heavy burden of overcoming the presumption. *Catholic Healthcare West*, 344 NLRB No. 93 (2005); *Trane*, 339 NLRB 866 (2003);

Visting Nurses Association of Central Illinois, supra. In order to rebut the presumption, the Employer must demonstrate that the operation of its various facilities is so integrated that the separate identity of the single facility has been negated. *Catholic Healthcare West*, supra; *Bowie Hall Trucking*, 290 NLRB at 41.

In determining whether the presumption has been rebutted, the Board considers factors such as: centralized control over daily operations and labor relations; common or autonomous supervision; similarity of employee skills, functions and working conditions; the degree of employee interchange; geographic separation; and bargaining history. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837, 839 (1993). Moreover, the Board considers the degree of interchange and separate supervision to be of particular importance in determining whether the single-facility presumption has been rebutted. *Catholic Healthcare West*, supra; *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); *Heritage Park Health Care Center*, supra. I will now address the evidence related to these various criteria, beginning with interchange and separate supervision.

The evidence regarding interchange strongly supports the conclusion that the Employer has failed to rebut the single facility presumption. In the instant case, the Employer concedes that QC I and QC II employees work exclusively at their regularly assigned work sites, and they have never been assigned to other facilities. In addition, the Employer has never required any QC employee to transfer from one work site to another. Therefore, even though the duties of the QC I and QC II employees throughout the 22

sites are similar, as dictated by the SOW, there is no employee interchange between the facilities.¹⁸

With regard to the separate supervision, the evidence establishes that QPA Tieger, a statutory supervisor, is the highest ranking representative of the Employer at the Richmond facility. She supervises the QC I and QC II employees, and she controls the day-to-day operations for the Employer at the Richmond site. While it is true that the Employer has centralized control over personnel and labor relations policies, including payroll, and wages and benefits, centralized control of corporate operations does not necessarily render a single-facility unit inappropriate. *The Concrete Company*, 336 NLRB 1311, 1315 (2001); citing *Bowie Hall Trucking*, supra; *Cargill, Inc.*, 336 NLRB 1114 (2001). Indeed, where the evidence demonstrates significant local autonomy over labor relations, overall centralized control is not enough to rebut the single-location presumption. *New Britain Transportation Co.*, supra; *Carter Hawley Hale Stores*, 273 NLRB 621 (1984).

The instant record clearly establishes that the QPA at the Richmond site, as well as the QPAs at other sites, retain a significant degree of autonomy in performing labor relations functions, as well as in monitoring the daily operations at their respective sites. QPAs authorize and approve overtime, approve requests for time off, such as vacation requests, conduct “team building” employee meetings, and are responsible for monitoring, collecting, and approving payroll timesheets. QPAs have the authority to discipline QC employees if the circumstances warrant immediate action. Their recommendations to hire are followed just about 100 percent of the time. Significantly,

¹⁸ The only record evidence of interchange involves temporary transfers of managerial and supervisory personnel (QAM and/or QPA) to fill operational needs. As such, it cannot be said that employee interchange occurs between the sites.

QC I and II employees have been instructed by the Employer to bring their workplace grievances to the attention of their respective QPA. This, together with the fact that visits by management personnel to the operating sites are infrequent and generally occur only to fill in for supervisory personnel who are absent, indicates a substantial degree of autonomy in labor relations matters by the local QPAs.¹⁹

In considering the less significant factors considered by the Board in assessing a single facility presumption, I note that some factors favor and others further undermine the Employer's position. It is true that the QC I and II employees at the Richmond site and at the Employer's other USPS work sites have the same skills, receive similar training, perform the same type of work and share many common terms and conditions of employment. However, the evidence also shows that the Richmond employees have some working conditions that differ from those of the employees working at the other USPS sites. For example, the Richmond site is one of the few operation sites with only one QPA, therefore, some of the QC I employees at the Richmond site work about four hours per day without a QPA on duty. The Richmond site employees also have slightly different hours of work than at other sites. The pay rates of the QC employees at the 22 sites vary depending on the location of the work site. Other factors that militate against finding that the Employer has rebutted the single facility presumption in this case are that there is no evidence that QC employees at the Richmond facility have any contact with QC employees at the other USPS work sites, and the nearest work site to the Richmond site is several hundreds miles away.

¹⁹ In this regard, Director of Operations Nevor has never visited the Richmond facility and QAM Simpson has only visited the Richmond site about three times since March 1, 2005.

Based on the foregoing, and the record as a whole, I find that the presumption of the appropriateness of a single-location unit at the Richmond operation has not been rebutted. The QPA at the Richmond site retains a significant degree of autonomy, there is no employee interchange, there is significant geographic separation between the Richmond facility and the Employer's other 21 sites, and there is insufficient evidence of functional integration between the Employer's other 21 sites and its Richmond operation.²⁰

Supervisory Status of the QC II Employees

The primary supervisory indicia enumerated in Section 2(11) of the Act are read in the disjunctive, so that possession of any one of the 12 listed authorities can vest an individual with supervisory status. *Ohio Power Co. v. NLRB*, 176 F. 2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949); *Allen Service Co.*, 314 NLRB 1060, 1061 (1994). In addition, possession of any one of these primary indicia of supervisory authority, regardless of the frequency of their use, is sufficient to establish supervisory status, provided that such authority is exercised in the employer's interest, and requires independent judgment in a manner that is more than routine or clerical. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981); *Queen Mary*, 317 NLRB 1303 (1995).

The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. *NLRB v. Kentucky River Community Care*, 532 U.S.

²⁰ The Employer's reliance on *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2002), is misplaced. Among other things, unlike the present case, the Board found that there was "a significant amount of functional integration and employee contact" among the several stores involved in that case, including temporary and permanent transfers among the stores. In addition, the stores were all located within 40 minutes of each other. Finally, the branch managers in *Budget Rent A Car, Inc.* had little or no input regarding hiring, firing, and discipline of employees, and they could not authorize overtime without approval from the district manager. Thus, the Board concluded that control of labor relations was centralized under the authority of district management and corporate policy.

706, 121 S.Ct. 1861 (2001); *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Tucson Gas and Electric Co.*, 241 NLRB 181 (1979). To meet this burden the party asserting supervisory status must provide sufficient detailed evidence of the circumstances surrounding the alleged supervisor's decision making process in order to demonstrate that the alleged supervisor was exercising the degree of discretion or independent judgment that is necessary to establish supervisory status. The Board is mindful not to deprive employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Azusu Ranch Market*, 321 NLRB 811, 812 (1996).

The Employer asserts that QC II employees act as supervisors in the absence of QPAs by giving work instructions and being responsible for the work and concerns of QC I employees. In support of its position, the Employer presented only the conclusionary testimony of a high ranking manager who had not been to the Richmond facility, or even to many of the other USPS work sites of the Employer. The Employer did not explain why the QCII job description did not include the acting QPA duties, and it did not describe a single specific example of any QC II employee exercising any supervisory authority. The one QCII who testified gave specific testimony based on first hand experience, and this testimony contradicted the conclusionary testimony presented by the Employer, and the Employer did not present any further testimonial evidence or documentary evidence contradicting the testimony of Frank Thurman that he and QCII Luz Williams have never exercised any supervisory authority at the Richmond facility and that they have never been told that they had any supervisory authority.

Based on the foregoing, I conclude that I cannot rely on the Employer's conclusionary testimony, and that the Employer has not established that Thurman or

Williams (or any QC II at any of the other 21 sites) possess any of the primary indicia of supervisory status. For the reasons set forth above, and based on the record as a whole, I find that the Employer has not sustained its burden of establishing that Frank Thurman and/or Luz Williams are supervisors as defined in the Act.

CONCLUSIONS

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, including the parties' arguments made at the hearing and the brief filed by the Employer, and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is a New York corporation with a place of business located in Richmond, California, where it is engaged in the business of quality control engineering and related services. During the past 12 months, the Employer in the course and conduct of its business operations, performed services valued in excess of \$50,000 for the United States Postal Service which in turn meets the Board's direct jurisdictional standard. Based on these facts, the parties also stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act. In these circumstances, I find the assertion of jurisdiction in this case to be appropriate.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer at its Richmond, California work site constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time quality clerk I and quality clerk II employees employed by the Employer at its Richmond, California place of business; excluding all other employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local Union 315, Change to Win Coalition. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In

addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). The undersigned shall make the list available to the Petitioner when the undersigned shall have determined that

an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **December 5, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 12, 2005**. The request may **not** be filed by facsimile. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance electronic filing can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

Dated: November 28, 2005

Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

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